

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4218 SLAB HB 517 - HB 562 1098



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Signature of Camera Operator

11/24/89  
Date

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# State of Alaska

## COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
(Co-Chairman)  
HOUSE JUDICIARY  
HOUSE COMMUNITY AND  
REGIONAL AFFAIRS



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4968

914 CLAY COURT  
ANCHORAGE, ALASKA 99502  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spennard, Upper Midtown Anchorage

### Memorandum

From: Representative Max F. Gruenberg, Jr. *MG*  
Re: CSHB 517 (JUD), relating to the private sale  
and consignment of works of art  
Date: April 17, 1986

This bill is modeled after two New York statutes passed in 1966, and is designed to offer protections to Alaskan artists in their business relationships with art dealers and their rights to reproduction.

SECTION 1 Provides that works of art on consignment are not subject to the claims of an art dealer's creditors, and that a sign must be posted in a gallery where art is sold on consignment stating that works of art for sale are on consignment.

SECTION 2 Provides that works of art delivered to an art dealer are trust property in the hands of the art dealer for the benefit of the artist.

Provides that subsection (a)(3) of 45.67.020 may be waived if the agreement is clear and agreed to in writing, however, under a waiver the proceeds of a sale are still not subject to a lien against an art dealer.

Provides that unsold artwork must be returned to the artist on demand consistent with any written agreement.

Also provides that the provisions of 45.67.010 - 020 may not be construed to effect an existing contract. Subsection (b) provides that this law will apply to all future dealings between an artist and art dealer

## Protection of Ownership Rights of Artists Act

Artists often find themselves in a complicated and disadvantageous business situation when conveying rights to a work of art. Artists will frequently make an agreement for reproduction rights to an artwork, but are often unable to reacquire the original artwork after it has been reproduced if the agreement was oral or the contract was complex and signed without benefit of counsel. This 1983 New York law overcomes these problems and protects the interests of the individual artists involved.

Under this bill, even if an artist or owner sells reproduction rights for a work of art, the ownership of the actual work remains with the creator or owner unless the ownership is transferred in writing and signed by the artist or owner. In addition, any contracts selling reproduction rights must be in plain language. If a purchaser does not comply with this requirement the contract could be unenforceable and any right not conveyed would remain with the artist or owner.

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This act may be cited as the Protection of Owner-  
2 ship Rights of Artists Act.

1 Section 2. [*Definitions.*] As used in this act:

2 (1) "Work of Art" means any visual or graphic art of any medium.

3 (2) "Artist" means the creator or creators of a work of art.

4 (3) "Reproduction Right" means a right to reproduce, prepare derivative  
5 works of, distribute copies of, publicly perform or publicly display a work  
6 of art.

1 Section 3. [*Right to Reproduce Works of Art.*]

2 (a) Whenever a work of art is sold or otherwise transferred by or on behalf  
3 of the artist who created it, or his heirs or personal representatives, the right  
4 of reproduction thereof is reserved to the grantor until it passes into the  
5 public domain by act or operation of law unless such right is sooner expressly  
6 transferred by an instrument, note or memorandum in writing, signed by the  
7 owner of the rights conveyed or his duly authorized agent.

8 (b) Whenever an exclusive or non-exclusive conveyance of any reproduc-  
9 tion right is made by the holder of such right, or his duly authorized agent,  
10 ownership of the physical art work shall be presumed to remain with and  
11 be reserved to the grantor unless expressly transferred in writing by an in-  
12 strument, note, memorandum or by other written means, signed by the  
13 grantor or his duly authorized agent.

14 (c) Nothing herein contained, however, shall be construed to prohibit the  
15 fair use of such work of art.

16 (d) Nothing in this article shall operate or be construed to conflict with  
17 any rights or liabilities under federal copyright law.

1 Section 4. [*Severability.*] [Insert severability clause.]

1 Section 5. [*Repealer.*] [Insert repealer clause.]

1 Section 6. [*Effective Date.*] [Insert effective date.]

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## of Artists Act

and disadvantageous business. An artist will frequently make but will be unable to reacquire the agreement was oral or the counsel. This 1983 New York rests of the individual artists

production rights for a work to the creator or owner unless by the artist or owner. In addition in plain language. If a contract could be unenforceable artist or owner.

as the Protection of Owner-

graphic art of any medium. of a work of art. reproduce, prepare derivative or publicly display a work

rt.)  
be transferred by or on behalf of legal representatives, the right to such right is sooner expressly in writing, signed by the authorized agent.  
conveyance of any reproduction by his duly authorized agent, presumed to remain with and transferred in writing by an instrument in writing, signed by the

be construed to prohibit the

be construed to conflict with law.

clause.]

## Protection of Artists Whose Work Has Been Altered Act

Several well-known cases of mutilated, altered or defaced artwork have led to a drive to balance the property rights of owners against the creative rights of the artists and the general rights of society. The following legislation was enacted by New York in 1983 to protect the reputation of an artist after an artwork has been sold.

The bill gives a legal cause of action if a work which an artist created was defaced, altered or mutilated (without the artist's consent) and damage to the artist's reputation could result. The artist could also claim or disclaim authorship of work. Exceptions are made when: an artist consents to changes in writing; the nature of the materials used causes a change in the work; a change occurs because of the reproduction process or when work is professionally framed or restored. An aggrieved artist is afforded a cause of action for damages, exemplary damages where appropriate, equitable relief, and reasonable attorney and witness fees.

(Title, enacting clause, etc.)

1 Section 1. [Short Title.] This act may be cited as the Protection of Artists  
2 Act.

1 Section 2. [Definitions.] As used in this act:

2 (1) "Artist" means the creator of a work of fine art.

3 (2) "Conservation" means acts taken to correct deterioration and altera-  
4 tion and acts taken to prevent, stop or retard deterioration.

5 (3) "Person" means an individual, partnership, corporation, association  
6 or other group, however organized.

7 (4) "Reproduction" means a copy, in any medium, of a work of fine art  
8 that is displayed or published under circumstances that, reasonably con-  
9 strued, evinces an intent that it be taken as a representation of a work of  
10 fine art as created by the artist.

11 (5) "Work of Fine Art" means any original work of visual or graphic art  
12 of any medium which includes, but is not limited to, the following: painting;  
13 drawing; print; photographic print or sculpture of a limited edition of not more  
14 than 300 copies; provided however, that "work of fine art" shall not include  
15 sequential imagery such as that in motion pictures.

1 Section 3. [Public Display, Publication and Reproduction of Works of Fine  
2 Art.] Except as limited by Section 5 of this act, no person other than the ar-  
3 tist or a person acting with the artist's consent shall knowingly publicly  
4 display or publish a work of fine art of that artist or a reproduction thereof  
5 in an altered, defaced, mutilated or modified form if the work is displayed,  
6 published or reproduced as being the work of the artist, or under cir-  
7 cumstances under which it would reasonably be regarded as being the work  
8 of the artist, and damage to the artist's reputation could result therefrom.

1 Section 4. [Artists' Authorship Rights.]

2 (a) Except as limited by Section 5 of this act, the artist shall retain at all  
3 times the right to claim authorship, or, for just and valid reason, to disclaim

## Suggested State Legislation

4 authorship of his or her work of fine art. The right to claim authorship shall  
5 include the right of the artist to have his or her name appear on or in con-  
6 nection with the work of fine art as the artist. The right to disclaim author-  
7 ship shall include the right of the artist to prevent his or her name from ap-  
8 pearing on or in connection with the work of fine art as the artist. Just and  
9 valid reasons for disclaiming authorship shall include that the work of fine  
10 art has been altered, defaced, mutilated or modified other than by the artist,  
11 without the artist's consent, and damage to the artist's reputation could result  
12 or has resulted therefrom.

13 (b) The rights created by this section shall exist in addition to any other  
14 rights and duties which may now or in the future be applicable.

### 1 Section 5. [*Limitations of Applicability.*]

2 (a) Alteration, defacement, mutilation or modification of a work of fine art  
3 resulting from the passage of time or the inherent nature of the materials  
4 will not by itself create a violation of Section 3 or a right to disclaim author-  
5 ship under Section 4(a), provided such alteration, defacement, mutilation or  
6 modification was not the result of gross negligence in maintaining or pro-  
7 tecting the work of fine art.

8 (b) In the case of a reproduction, a change that is an ordinary result of the  
9 medium of reproduction does not by itself create a violation of Section 3  
10 or a right to disclaim authorship under Section 4(a).

11 (c) Conservation shall not constitute an alteration, defacement, mutilation  
12 or modification within the meaning of this act, unless the conservation work  
13 can be shown to be negligent.

14 (d) In the case of work prepared under contract for advertising or trade  
15 use, the rights granted by this article may be waived contractually or other-  
16 wise at any time.

17 (e) The provisions of this article shall apply only to works of fine art know-  
18 ingly publicly displayed, published or reproduced in this state.

### 1 Section 6. [*Relief.*]

2 (a) An artist aggrieved under Sections 3 or 4 shall have a cause of action  
3 for damages, exemplary damages where appropriate, equitable relief and  
4 reasonable attorney's and expert witness's fees, provided, the court may,  
5 in its discretion, award attorney's and expert witness's fees to the defen-  
6 dant upon dismissal of any action on the grounds such action was frivolous  
7 and malicious.

8 (b) No action may be maintained to enforce any liability under this article  
9 unless brought within three years of the act complained of or one year after  
10 the constructive discovery of such act, whichever is longer.

### 1 Section 7. [*Severability.*] [Insert severability clause.]

### 1 Section 8. [*Repealer.*] [Insert repealer clause.]

### 1 Section 9. [*Effective Date.*] [Insert effective date.]



**Alaska Arts  
Southeast**<sup>INC</sup>

P.O. BOX 2133, SITKA, ALASKA 99835 · PHONE (907) 747-8177

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February 7th, 1986

Representative Peter Goll  
Box 581  
Haines, AK 99827

Dear Peter:

I would like to express my support of House Bill No. 517, which you co-sponsored in the State Legislature. I believe that this bill would be fair to all parties concerned, and codifies honest and prudent practice between artists and those who maintain galleries.

Thank you for returning my call this week concerning the possibility of a teleconference this spring. As I stated in our conversation I conducted a survey of Arts Organizations in Southeast in an attempt to gauge interest in a consortium of presentors in our region. Such a consortium could save money for all organizations and increase the range of choices for many of the smaller communities. A by product would be the facilitation of planning an entire season of events for Southeast.

I have enclosed copies of Presenter Survey forms from those who responded favorably. Five communities from District two are represented: Skagway, Haines, Metlakatla, Hoonah, and Angoon. A sixth organization has since expressed interest in Gustavus. Keep in mind that the interest has been expressed by organizations which ultimately represent and impact hundreds of individuals. Ten other organizations have also expressed an interest with- in the following communities: Juneau, Sitka, Ketchikan, Port Alexander, Pelican, and Petersburg. It would appear then, that at least half of the communities expressing an interest in talking further about a consortium are in District 2.

If we are to be effective in our efforts to begin planning and discussing booking for next year we should begin our dialogue soon. I don't know what your schedule will allow but I would suggest sometime between the last week in March and mid May. Early May would be ideal for me since I am on the road in Southeast recruiting for Camp during most of April.

I realize, however, that teleconferences are difficult to schedule. I would appreciate any efforts that you could make in securing one for the arts communities in our region.

Sincerely,

Gordon M. Bolar  
Executive Director  
Alaska Arts Southeast



R. T. Wallen  
P. O. Box 1063  
Juneau, Alaska, 99802

Rep. Max Gruenberg  
Pouch V  
State Capitol  
Juneau, Alaska, 99811

February 9, 1986

Dear Max,

I very much appreciate the efforts of the sponsors of this arts bill. I think it is going to clarify some rather vague areas concerning the rights and responsibilities of artists, art dealers and art patrons. The section of the bill in which I am most interested is 45. 67. 020, the section dealing with the right to reproduce works of art.

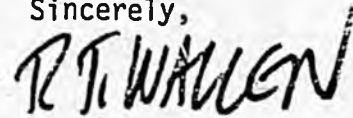
Whenever an artist creates a series of original prints, from a stone or metal plate, for example, or when he reproduces a painting with a series of prints, or makes a series of castings from a mold, the artist may elect to mark these original prints, or reproductions, or castings with the letter "c" enclosed in a circle, followed by his initials and the year date. This copyright symbol and initials and date proclaim his "intent to copyright" and proclaim his rights under Federal Copyright Law. The system functions well with works of art which appear as multiple images or forms since everyone, artist, dealer and buyer understand, by the fact of the copyright signal appearing on the art that certain rights to the reproduction of that work have been established.

Original works, however, one of a kind works, whether they be paintings, or drawings or sculptures, often do not bear the copyright symbol because the artist has not reproduced them, and does not intend that they be reproduced. In fact, the artist, although he has the option of marking the work with the copyright symbol, often will not do so because the appearance of the copyright symbol on an original work implies that it has been reproduced, or might be reproduced in the future, and the mark might thus affect the value of the work both aesthetically and commercially. As I understand Federal Copyright Law, the artist has sole rights to reproduction of an original work of his own art regardless of whether he has marked it with the copyright symbol. However, the lack of such a symbol on a work of art can create an area of uncertainty in the mind of a buyer or art dealer.

For this and other reasons I think that there is value in a state law which addresses the problem and spells out the legal rights of artists in regards to the reproduction of their works of art. I think the fairness of the theory of this section of of the bill is reflected in Federal Copyright Law, in the legal rights of authors to their printed works, and in the legal rights that pertain to many kinds of design work, such as achitecture, boat design and so on.

As a state law, this is close to home, and every person seriously involved in the art world here in the state will be familiar with it. As an artist who has had to deal with copyright related issues a number of times in my career, and who has business with many different art dealers, and who is often asked by patrons about their rights in regard to a work of art, I see great value in this bill and benefits to artist, dealer and buyer alike. It goes a long way in clearly establishing the ground rules.

Sincerely,

A handwritten signature in black ink that reads "R. T. WALLEN". The letters are bold and slightly slanted, with a distinctive flourish on the final "N".

R. T. Wallen

CHAIRMAN'S INFORMATION: CSHB 517 (Jud)am

1) BILL TITLE: "An act relating to the private sale and consignment of works of art."

a) Introduced: Gruenberg

b) Co-sponsors:

2) INTENT: This measure clarifies the relationship between artists and art dealers concerning art work being sold on consignment.

N.B. Rep Gruenberg may be offering an amendment which would require the drafting of an SCS

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Finance and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption?

*Need to Adopt L&C SCS*

L&C SCS DELETED  
SUBSECTION (C) P 3  
LINES 23-25 of  
CSHB 517(Jud)

Original sponsors: Gruenberg, Goll,  
Koponen, et al

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 517 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the private sale and consignment  
7 of works of art."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 45.02.326(e) is repealed and reenacted to read:

10 (e) When an artist delivers a work of art to an art dealer as  
11 described in AS 45.67.010, the art dealer shall prominently display a  
12 sign stating substantially, "Works of art for sale are on consign-  
13 ment." Works of art on consignment are not subject to the claims of  
14 the art dealer's creditors.

15 \* Sec. 2. AS 45 is amended by adding a new chapter to read:

16 CHAPTER 67. ARTISTS AND WORKS OF ART.

17 Sec. 45.67.010. ARTISTS AND ART DEALER RELATIONSHIPS. (a) When  
18 an artist delivers or causes to be delivered a work of art of the  
19 artist's own creation to an art dealer for the purpose of sale, or  
20 exhibition and sale, on a commission, fee, or other basis of compen-  
21 sation, the acceptance of the work of art by the art dealer is a  
22 consignment, and

23 (1) the art dealer is, with respect to the work of art, the  
24 agent of the artist;

25 (2) the work of art is trust property in the hands of the  
26 art dealer for the benefit of the artist; and

27 (3) proceeds from the sale of the work of art are trust  
28 funds in the hands of the art dealer for the benefit of the artist,  
29 and the dealer shall transmit the proceeds to the artist within 30

1 days of the sale of the work of art.

2 (b) A work of art initially received as a consignment remains  
3 trust property notwithstanding the subsequent purchase of the artwork  
4 by the art dealer directly or indirectly for the art dealer's own  
5 account until the consignment price due to the artist is paid in full.  
6 If the work of art is resold to a bona fide third party before the  
7 artist has been paid in full, the proceeds of the resale are trust  
8 funds in the hands of the art dealer for the benefit of the artist to  
9 the extent necessary to pay any balance still due to the artist. The  
10 trusteeship continues until the fiduciary obligation of the art dealer  
11 with respect to the transaction is discharged in full.

12 Sec. 45.67.020. WAIVER. (a) A provision of a contract or  
13 agreement whereby the artist waives a provision of AS 45.67.010 is  
14 void except as provided in this subsection. An artist may waive the  
15 provisions of AS 45.67.010(a)(3) if the waiver is clear, conspicuous,  
16 and agreed to in writing by the artist. A waiver under this subsec-  
17 tion is not valid with respect to the proceeds of a work of art ini-  
18 tially received as a consignment but subsequently purchased by the art  
19 dealer directly or indirectly for the art dealer's own account.

20 (b) A waiver under (a) of this section may not inure to the  
21 benefit of the art dealer's creditors in a manner that is inconsis-  
22 tent with the artist's rights under AS 45.67.010.

23 Sec. 45.67.030. RETURN TO ARTIST. Unless the artist and art  
24 dealer have otherwise agreed in writing, the art dealer shall return  
25 an unsold work of art on demand of the artist.

26 Sec. 45.67.040. APPLICABILITY. (a) The provisions of AS 45.-  
27 67.010, 45.67.020, and 45.67.030 may not be construed to have an  
28 effect upon a written or oral contract or arrangement in existence on  
29 the effective date of this section, except by the mutual written

1 consent of the parties.

2 (b) The provisions of AS 45.67.010 and 45.67.020 apply notwith-  
3 standing the absence of, or a conflict with, a written agreement  
4 between the artist and the art dealer concerning any matter covered by  
5 AS 45.67.010 and 45.67.020. In the event of a conflict between  
6 AS 45.67.010, 45.67.020, or 45.67.030 and AS 45.01 - AS 45.09 (Uniform  
7 Commercial Code) or other provision of law, the provisions of AS 45.-  
8 67.010, 45.67.020, and 45.67.030 govern.

9 Sec. 45.67.050. RIGHT TO REPRODUCE WORKS OF ART. (a) When a  
10 work of art is sold or otherwise transferred by or on behalf of the  
11 artist who created it, or the heirs or personal representatives of the  
12 artist, the right of reproduction is reserved to the grantor until it  
13 passes into the public domain by act or operation of law, unless the  
14 right is sooner expressly transferred by an instrument, note, or  
15 memorandum in writing signed by the owner of the right or an author-  
16 ized agent of the owner.

17 (b) When an exclusive or nonexclusive conveyance of a right of  
18 reproduction is made by the holder of the right, or the holder's  
19 authorized agent, ownership of the physical art work is presumed to  
20 remain with and be reserved to the grantor unless expressly trans-  
21 ferred in writing signed by the grantor or the grantor's authorized  
22 agent.

23 (c) This section may not be construed to prohibit the fair use  
24 of a work of art or to conflict with federal copyright law.

25 Sec. 45.67.100. DEFINITIONS. In this chapter, unless the con-  
26 text otherwise requires,

27 (1) "artist" means the creator of a work of art or, if  
28 deceased, the heirs or personal representatives of the creator;

29 (2) "art dealer" means a person engaged in the business of

1 selling works of art, other than a person exclusively engaged in the  
2 business of selling goods at public auction;

3 (3) "consignment" means that no title to or estate in the  
4 goods or right to possession superior to that of the consignor vests  
5 in the consignee, notwithstanding the consignee's power or authority  
6 to transfer and convey, to third person, all of the right, title and  
7 interest of the consignor, in and to the goods;

8 (4) "creditor" has the meaning given in AS 45.01.201;

9 (5) "right of reproduction" means a right to reproduce,  
10 prepare derivative works of, distribute copies of, or publicly display  
11 a work of art;

12 (6) "work of art" means a painting, sculpture, drawing,  
13 work of graphic art, photograph, or craft work, in any medium.  
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STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revised Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSHB 517 (L&C)  
 Title: "An Act relating to the private sale and consignment of works of art."

Sponsor: Repr. Gruenberg  
 Requestor: House Labor & Commerce  
 Date of Request: February 11, 1986

**FISCAL DETAIL**

Agency Affected: Department of Law  
 BRU: Legal Services

Components: Legal Services Operations

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :**

This bill sets out some of the property rights of artists, providing for the sale and consignment of works of art under Title 45. The bill, which adds a new Chapter to this Title, does not contain penalty provisions. Any disputes arising from the provisions of the bill would be civil matters between private parties and would not involve the Department of Law.

Prepared by: Richard I. Pegues, Director  
 Division: Administrative Services Division

Phone: 465-3672  
 Date: 2/12/86

Approved by Commissioner: Richard I. Pegues/Ferl  
Harold M. Brown, Attorney General  
 Agency: Department of Law

Date: 2/12/86



# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith  
Signature of Camera Operator

11/24/89  
Date

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CHAIRMAN'S INFORMATION: SCS CSHB 522(L&C)

1) BILL TITLE: "An act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and provision of medical malpractice insurance for nurses and nurse midwives."

a) Introduced: Rep Sund

b) Co-sponsors:

2) INTENT: This measure contains portions of various insurance "reform" proposals which have been heard in committee this year. Among these are payments to brokers, cancellation notifications, and notification for nonrenewal of insurance policies. It also expands MICA provisions to offer insurance to nurses and nurse midwives. The version which passed the House contained language which would provide for a nurse or nurse midwife to hold a seat on the MICA Board, and I have deleted that provision in the SCS.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Judiciary and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption? Need to adopt the L&C SCS, plus the title change; An SCR was introduced this morning to effect that change.

OVERVIEW

Prepared by Rep. John Sund's office.  
April 27, 1986

OBJECTIVE OF THE BILL

The purpose of House Bill 522 is to approach the effects of the insurance crisis through tightening various insurance regulations and expanding the Medical Indemnity Corporation of Alaska.

WHAT THIS BILL DOES

1. Regards premium payments to insurance brokers as payments directly to the insurance company. This will prevent alleged nonpayment of premium cancellations because a broker walked off with the payment.
2. Clarifies accepted reasons for canceling a personal line (auto and homeowner's) insurance policy and increases the time requirement for notification of cancellation from 20 days to 60 days with certain exceptions. It also requires a stated reason for the cancellation.
3. Establishes criteria for canceling a business or commercial insurance policy and requires 60 days notice of cancellation with certain exceptions. It also requires a stated reason for the cancellation.
4. Establishes a 45 day notice of nonrenewal for business and commercial policies.
5. Expands the Medical Indemnity Corporation of Alaska (MICA) to offer insurance to nurses and nurse midwives and adds a nurse or nurse midwife to the MICA board of directors.

WHY THIS BILL IS NEEDED

While we have been attacking the insurance crisis primarily from the tort reform angle and the pooling concept, we can also help the situation through insurance regulation reform.

Not only is it traumatic to have your insurance canceled, it is worse to have it canceled without adequate notice so that other coverage can be sought. We now have no law that requires advance notice of cancellation of business or commercial insurance. This bill would give the insured 60 days to find alternate coverage.

This bill also helps those nurses who are working in high-risk fields, such as childbirth, and cannot find insurance coverage. MICA would now be available to them.

The bill carries a zero fiscal note and is supported by the Division of Insurance.

CS HB 522 (Judiciary)

SECTIONAL ANALYSIS

Prepared by Rep. John Sund's office.

Section 1; Page 1, line 13: amends AS 21.27.200 (a) by stating that a broker is not an agent for the insurer, except as provided in (c) (see Section 2 below). Nothing in this section is intended to change common law on agency.

Section 2; Page 1, line 22: adds the new subsection (c) referred to above. This makes the broker the agent of the insurer for the purpose of collecting premiums.

This is important to the Division of Insurance and gives the insured more latitude in premium payments. When the broker receives a premium payment, it is treated as if the insurance company has received it. This protects the insured and prevents policy cancellation due to nonpayment of premiums because an unscrupulous broker walked off with the cash. According to the division, this section could save many thousands of dollars per year for the consumer.

Section 3; Page 1, line 28: amends present statute on limits on cancellation by clarifying that insurers cannot cancel a personal automobile insurance policy unless premiums aren't paid or the insured's license is revoked or suspended.

Section 4; Page 2, line 11: amends the reasons for which limits on cancellation in this section don't apply:

- 1) failure to renew a policy unless it was in force for less than 12 months. (This is already in statute.)
- 2) a policy that is less than 60 days old, unless it is a renewal.
- 3) an automobile assigned risk or automobile insurance plan.
- 4) a policy insuring more than four vehicles.
- 5) a policy covering a business related to automobiles.

Section 5; Page 2, line 28: amends present statute on limits on cancellation by specifying that the following limits apply only to personal insurance other than personal auto insurance:

- 1) nonpayment of premiums.
- 2) conviction of a crime that increases insured's risk.
- 3) discovery of fraud or misrepresentation by insured.
- 4) discovery of negligent act or omission that increases insured's risk.
- 5) physical change in insured's property making it

uninsurable.

Section 6; Page 3, line 19: places limits on cancellation of a business or commercial policy. No provisions now exist in law to limit commercial insurance cancellation. The limits are the same as in Section 6 (personal insurance), but additional reasons specific to commercial insurance are added.

This section also provides in (b), Page 4, line 23, for the director of the Division of Insurance to determine on a case by case basis whether a reason for cancellation not listed in this section is justified.

Section 7; Page 4, line 25: increases the notice of cancellation of a personal insurance policy from 20 days to 60 days before the cancellation date. If nonpayment of premium is the reason for cancellation, however, notice must be served within 10 days, which is present law.

This section also requires that the notice include a statement of the reason for cancellation.

Section 8; Page 5, line 9: requires the same time frame for cancellation of business or commercial insurance as that for personal lines as cited above.

Unearned premium must be returned or credited before the cancellation effective date unless the cancellation is for nonpayment. In that case, the unearned premium must be returned or credited within 45 days after the cancellation date.

Policy premiums subject to audit are also exempt from the above refund requirement. The audit must be done within 30 days of the cancellation date and the unearned premium must be returned or credited within 30 days of the audit completion.

Section 9; Page 6, line 2: clarifies that the present law requiring renewal of policies that are in force less than 12 months pertains only to personal lines.

This section also adds business and commercial lines to the requirements for notice of nonrenewal with a 45 day notice period. Personal lines require only 20 days notice of nonrenewal.

This section doesn't apply if the insurer in good faith was willing to renew, if premiums weren't paid on the expiring

policy, or if premiums weren't paid as required for renewal.

Section 10; Page 6, line 19: is housekeeping on the requirement to notify those denied auto liability insurance of the auto assigned risk plan.

Section 11; Page 6, line 29: Definitions.

Section 12; Page 8, line 24: amends the makeup of the Medical Indemnity Corporation of Alaska (MICA) board of directors by reducing the number of physicians from four to three and adding a licensed nurse or nurse midwife to the board. The reason for the change is that under this bill, nurses would be eligible for coverage through MICA (see section 14).

Section 13; Page 9, line 15: amends MICA statute by allowing nurses and nurse midwives to be a separate entity for coverage.

Section 14; Page 12, line 10: Definitions.

Section 15; Page 12, line 16: repeals statutes the intent of which are covered elsewhere in this bill.

CSHB 522(L&C): "An Act relating to payment of insurance premiums, cancellation of insurance policies, and the provision of medical malpractice insurance for nurse midwives; and providing for an effective date."

The Department favors passage of this proposed legislation.

Sections 1 & 2 of this bill would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority. The insurance agent has a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. While it is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, this must be done in court on a case by case basis.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Sections 3 - 10 and 14 address cancellation of commercial insurance policies. Under existing law, there is a limitation on cancellation of personal lines policies such as automobile insurance policies and homeowners insurance policies. A part of this law also establishes minimum amounts of time when a cancellation is issued and requires a reason for any cancellation or nonrenewal of coverage. These minimums and reasons do not currently apply to business or commercial policies.

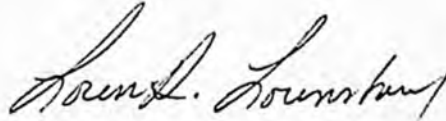
This proposal will provide for a 60 day notice time that a company must give when it cancels an insurance policy, other than personal lines of insurance. It also requires that any unearned premium shall be returned prior to the effective date of cancellation unless cancellation is for nonpayment of premium.

The need for this request arises from the tightening insurance markets. As companies are reducing the amount of insurance they are writing, they are eliminating entire classes of insurance from their book of business and they are often cancelling policies of those insureds who have suffered losses. The Alaskan consumer needs adequate notice in order to be able to find an alternate insurer in the event that his policy is cancelled.

To accomplish this, it is necessary to substantially rearrange AS 21.36.210 - AS 21.36.310. The changes do not revise the impact of those sections of law on personal lines. It does make some of those provisions applicable to business or commercial insurance.

We recommend that the notice period for a nonpayment cancellation remain unchanged. This means removing the charge made on page 3, line 24. and changing the 20 days on page 4, line 4 to read 10 days. The logic for this is that a person about to receive notice for nonpayment generally knows that payment has not been made. 10 days is adequate.

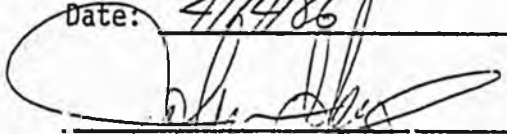
Sections 11 - 13 provide that nurse midwives can purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska (MICA). This will provide an additional market that the nurse midwife would have available if required. We would recommend that Section 11 on page 7, lines 9 - 29 be omitted. There are 1200 physicians licensed by the state who are conceivably eligible for coverage from MICA while there are only 21 licensed nurse midwives who might be eligible for coverage from MICA with passage of this bill. That is not a reasonable basis for changing the makeup of the governing board of MICA. This feature should remain unchanged.



\_\_\_\_\_  
Loren H. Lounsbury, Commissioner  
Department of Commerce & Economic  
Development

Date: \_\_\_\_\_

4/14/86



\_\_\_\_\_  
John U. George, Director of Insurance

Date: \_\_\_\_\_

4/14/86

**AMERICAN COLLEGE OF NURSE-MIDWIVES,  
ALASKA CHAPTER**

**April 30, 1986**

**Senator Bettye Fahrenkamp  
Chairman, Senate HESS Committee  
Alaska State Legislature  
Pouch D (MS 3100)  
Juneau, Alaska 99811**

MAY 7 1986

**Dear Senator Fahrenkamp:**

**As a follow-up of my March letter, I am writing to inform you that an amendment for the MICA statute has been incorporated into House Bill 522, Judiciary version and is now on its way to the Senate. This bill would make it possible for certified nurse-midwives (CNM's) to obtain liability insurance from the Medical Indemnity Corporation of Alaska (MICA). Thank you for referring my request to the appropriate House committee.**

**I am now requesting that you spearhead a campaign to move it through the necessary channels in the Senate prior to the end of this legislative session.**

**As you know, certified nurse-midwives lost their liability insurance nationwide as of July 1985. (See enclosed congressional testimony entitled "Professional Liability Insurance for Certified Nurse-Midwives - Cost and Availability.") The national organization, the American College of Nurse-Midwives (ACNM) is trying to form its own insurance company but faces many obstacles. It is clearly going to take many months before a new program is in place. The certified nurse-midwives in Alaska do not have 'many months' before current policies expire.**

**Of the 29 certified nurse-midwives in Alaska, 13 are in clinical practices that include deliveries. Eight percent (1,048) of Alaskan births were attended by CNM's in 1985. Practices vary with one CNM attending 28% of the births at the Alaska Native Medical Center and four CNM's attending 20% of the births at Humana Hospital in Anchorage.**

Three of the four CNM's with privileges at Humana face an uncertain future as their temporary liability policies will expire by September 30th. Their collaborative physicians do not carry liability insurance so these nurse-midwives do not have the option of being covered under the physician's 'umbrella' policy.

Two CNM's in Homer and a new CNM in Kenai are 'going bare' because they have no other options.

The Juneau CNM plans to close her practice this July unless an alternative liability policy becomes available.

Certified nurse-midwives did not lose their master policy due to high lawsuit rates among the membership. As I am sure you are aware, there is a general crisis in the entire liability insurance industry and we have simply become one of its victims. In the last 10 years, only six percent of the national membership has been sued. In contrast, 60% of the nation's obstetricians have had suits brought against them.

Insurance companies view us as a risk because we deliver babies and the long statute of limitations (21 years) makes it impossible for a company to predict its losses. In our favor is the fact that we are the experts of 'normal' childbirth. We have stringent criteria upon which we base our selection of clients and we consult and refer to collaborative physicians as needed. We are held to the highest medical standards or face de-certification if we do not meet them.

I find it ironic that certified nurse-midwives are being 'penalized' for their expertise in obstetrics and midwifery while the State passes legislation sanctioning lay midwifery that essentially allows lay midwives to practice with little interference or supervision.

Certified nurse-midwives have been providing Alaskan consumers a valuable, safe service for over 10 years. We want to continue to serve Alaskan women and infants but are facing our greatest professional challenge as the lack of liability insurance threatens our very existence. We find it practical and in the best interest of clients to cover ourselves with liability insurance. Please give your support to HB 522, Judiciary version when it reaches the Senate and provide for an immediate effective date. Our clients will thank you!

Sincerely,

*Marilyn Pierce-Bulger*

Marilyn Pierce-Bulger, RN, CNM  
Chairman, Alaska Chapter, ACNM  
Box 9416 Hiland Road  
Eagle River, Alaska 99577  
wk 265-9245 hm 694-6076

Enclosures & Petitions

cc: Members, Alaska State Senate

Professional Liability Insurance for  
Certified Nurse-Midwives:  
Cost and Availability

United States Senate  
Committee on Commerce, Science  
and Transportation  
March 4, 1986

Good morning. My name is Karen Ehrnman and I represent the American College of Nurse-Midwives (ACNM). I have been invited to share with you the difficulties which certified nurse-midwives have in obtaining professional liability insurance coverage.

This testimony will chronicle the extensive yet unsuccessful steps the College has taken on behalf of its members to obtain professional liability insurance. Additionally, I shall describe the obstacles resulting from the decision made by the College to study our options to assist nurse-midwives in establishing an independent mutual insurance company.

The impact of this situation on America's small business community is twofold: approximately one-third of our members are in private practice; another segment of our membership either owns or provides most of the health care in the nation's 140 birth centers. Until now, accredited birth centers have been a success story in the small business world. During the first three years of their operation, only eight to ten percent of these centers fail. By contrast, twelve centers have closed in 1985 -- largely as a result of an inability to obtain professional liability insurance.

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

Background on ACNM

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. There are approximately 2,500 members of the ACNM, representing close to 85% of the profession. A full 95% of the members carry some type of professional liability insurance coverage.

Certified nurse-midwives are highly trained health professionals. Educated in both nursing and midwifery, they are specialists in maternal and child health care. They are licensed in all fifty states and provide care to the healthy woman before, during and after childbirth. They are experts in normal gynecologic and family planning care. Each member of the College has been officially certified through a national written examination.

The nurse-midwives work in a variety of settings -- such as private practices, university teaching hospitals, city hospitals, rural outreach centers, group health maintenance organizations, and health departments. Nurse-midwives deliver about three percent of the births in the United States. Approximately 75% of the births attended by certified nurse-midwives occur in hospitals, and another 15% occur in accredited birth centers.

Certified nurse-midwives work in clinical collaboration with physicians. ACNM standards require members to have an alliance agreement and health care protocols with a physician in order to practice. These agreements and protocols establish mechanisms for consultation and referral when complications arise.

ACNM also has reached a formal agreement outlining acceptable guidelines for working relationships with the American College of Obstetricians and Gynecologists.

#### Details of the Current Insurance Crisis

Since July, 1984, about 1400 CNMs have had professional liability insurance under a blanket ACNM policy written by the Mutual Fire, Marine and Inland Insurance Company. The remaining 1100 members of the College are

insured by their employers -- hospitals, health maintenance organizations, etc.

Mutual Fire notified ACNM in May, 1985 that the policy would not be renewed on July 1, 1985. ACNM's insurance was not renewed because of general conditions in the insurance industry -- the unavailability of reinsurance -- and not because of its members' professional performance. Suits have been filed against only six percent of all nurse-midwives -- a number not considered high among medical professionals. By comparison, 66.9 percent of obstetricians have been sued at least once according to the American College of Obstetricians and Gynecologists. In addition to the non-renewal of the blanket policy, over 300 individual certificates of insurance were cancelled this past July. These cancellations accounted for all of the individual certificates of insurance written after December 31, 1984; the remaining 1100 policies expired by December, 1985.

#### History of Insurance Coverage

Since the early 1970's, the American College of Nurse-Midwives has been able to obtain for its members a group policy that would pay up to one million dollars per claim. This one million dollar amount of insurance is the

amount which many hospitals require nurse-midwives to purchase in order to qualify for hospital privileges. It is this amount of insurance we want to make available to our members today.

Mutual Fire Marine and Inland Insurance was the third insurance carrier the ACNM has worked with in the past three years. The change in companies has been the result of three separate situations: 1) the inadequacy of the premium rate charged by one company; 2) the second company's withdrawal from the medical malpractice market; and 3) the nonrenewal of the reinsurance treaties for our most recent policy.

#### Steps Taken to Obtain New Insurance Policy

Early this year when ACNM received word that obtaining the master insurance policy might be difficult, we selected a "seasoned" broker with an excellent history of obtaining professional medical liability insurance. We believed that our broker understood what nurse-midwives are and that he would "market" us appropriately to the insurance industry. In search of a replacement for Mutual Fire we contacted 17 insurance companies in the United States. We were told that this represented most carriers in the U.S. who write professional liability

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large numbers of claims and skyrocketing awards. What was never actually said -- but implied -- was that the premium levels necessary to cover CNMs would be beyond the reach of professionals making an annual salary of \$25,000. Therefore, they offered no coverage at all.

But consumer groups, such as the National Insurance Consumer Organization (NICO), have accused the insurance industry of using misleading statistics in claiming a loss in 1985. Instead, NICO suggests the insurers have earned \$6.6 billion. The ACNM is not an insurance analyst; we do know that nurse-midwives are not part of the malpractice insurance problem because of our very low rate of suits. We believe that it would have been possible for an insurance company to write a policy for nurse-midwives at a reasonable rate and based upon sound actuarial data. In fact, as I shall discuss later in this testimony, our plan is to do just that -- to establish an independent mutual insurance company which will underwrite CNMs at a reasonable rate.

#### State Level Initiatives

Our next course of action was to send nurse-midwives to talk with professional liability insurance companies in their states. The response was still "no". Nurse-

midwives talked to governors, state legislators, and state insurance commissioners. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

Still focusing at the state level, nurse-midwives investigated joint underwriting authority (JUA) and lobbied state legislators to extend joint underwriting authority to include nurse-midwives. We have been successful in implementing this in a number of states. However, for the most part, either the premiums for this coverage have been excessive or the amount of insurance offered has been less than required.

#### Other Considerations

As we evaluated the situation, nurse-midwives had little hope of obtaining affordable insurance from either the traditional insurers or the state JUAs. While these two options had been under consideration, the College's Board of Directors also commissioned a feasibility study on various options for self-insuring. Although this study indicated that it would be "feasible" for nurse-midwives to form an insurance company, the Board of Directors decided last summer that the insurance business

was beyond the limited resources of nurse-midwives. The Board directed the staff of ACNM to look into working with other groups to self-insure or to join another group's self-insure program. The response to these inquiries was also "no", although ACNM continues to communicate with the American Nurses' Association (ANA) about forming a company for all nurses.

Another option involved asking Congress to consider establishing a nurse-midwife sponsored insurance program. At that time we had interested a primary insurer in writing the first layer of insurance coverage. That company would have written the first \$100,000 of coverage and the federal government would have provided the excess coverage from \$100,000 to one million dollars. Even as we discussed this with members of Congress, however, the primary insurer had a change of heart.

#### The Re-examination of Self-Insure

Consideration of all of the options discussed up to this point utilized an enormous amount of resources. The process also strengthened the resolve of the leaders of the profession that searching for insurance could not become an annual event. Therefore the College's Board of

Directors sought a second opinion on the self-insure options. This second evaluation confirmed the earlier one. In December, 1985, the Board of Directors decided to further study this option.

#### Forming an Insurance Company

The emotion which accompanied the decision to study helping certified nurse-midwives form an independent mutual insurance company was short-lived. Even after hiring consultants and attorneys, the road blocks before us are enormous.

Disregarding the very difficult financial problems, the following are some of the legal and technical complications which hinder the establishment of a company.

#### The Claims-Made Policy

One technical problem is the type of policy currently being written -- a claims-made policy. In the past professionals have been able to purchase occurrence policies. There is a very important distinction between these two types of policies -- a distinction which is critical to nurse-midwives as well as physicians.

An occurrence policy insures for all claims arising out of events which occurred during the covered

period regardless of when the claim is filed. A claims-made policy insures only those claims which are filed during the policy year no matter when the event occurred. Does it matter? Yes.

For example, under an occurrence policy issued in February 1986 - February 1987, the nurse-midwife would be covered for any claim related to a delivery during this calendar year, even if the family did not file the claim until the child entered elementary school or even college. A claims-made policy, on the other hand, would only cover those claims filed during the February 86 - February 87 calendar year. To be covered for claims filed after this time period the professional must purchase "tail coverage". What further complicates all of this is that in this insurance market it is impossible to buy a "tail" for 21 years -- the coverage that nurse-midwives and obstetricians need. In addition, insurance companies will not quote a price on a "tail" until it is needed, but we have been told it is likely to be two to three times the cost of a one year premium -- and can be more. We have been told by the insurance industry that primary insurers are switching to claims-made policies be-

cause reinsurers will not write occurrence policies. Reinsurers argue that it is easier to anticipate costs with a claims-made policy.

Regulatory Roadblocks in Forming an Insurance Company

Simply stated, we have been informed by our legal counsel that under the insurance laws of virtually all of the states, a new insurance company could not write insurance unless it became licensed in each of these states. This is a costly and time-consuming process that takes several years -- time we simply do not have. Also, the capital requirements of a few of the states exceed even our collective resources. Our legal counsel has reviewed the situation to see if exemptions from this licensing process exist, but none is available to us due to the number, size and geographic spread of our membership.

In 1981, Congress realized that this almost identical problem existed for small businessmen affected by the lack of product liability insurance, when it enacted the Risk Retention Act. This Act allowed groups of business to form risk retention groups to collectively insure the product liability risks of the members of the group without first becoming licensed as an insurer in any

jurisdiction other than that of the domicile of the risk retention group itself. In 1985, Congress again realized that a similar problem existed when the House and the Senate passed an almost identical bill (which is part of the Super Fund legislation now before Congress) to provide for risk retention groups for environmental impairment liability insurance.

We ask you to provide us with the same type of legislation to permit formation of a risk retention group for professional liability insurance for nurse-midwives and birthing centers.

Nurse-midwives Current Status: Temporary  
Insurance Coverage

In considering practicing without insurance, most CNMs, as well as most physicians, feel both a moral and practical obligation to protect their patients and themselves from any unintentional human error. In addition, many CNMs must carry professional liability insurance to retain their employment and/or hospital privileges.

In an attempt to keep practicing, most of our members purchased insurance during this past year from one of two

nursing groups whose policies did not include an exclusion of nurse-midwives. These organizations are the American Nurses' Association (ANA) and the Nurses' Association of the American College of Obstetricians and Gynecologists (NAACOG). The insurers of both of the groups have subsequently written into the policies exclusions of nurse-midwives. An informal survey of our membership indicates that this temporary coverage will begin to run out this spring and by next December no CNMs will have insurance if not provided by their employers or state JUA.

Requested Actions

I am certain you will agree with us that the formation of the insurance company over the next few months is critical. Congress can help. We urge Congress to: amend the 1981 Risk Retention Act; address the problem of the unavailability of reinsurance; and establish the availability of occurrence-type policies.

1) Amend the 1981 Risk Retention Act:

An expansion of this law to allow groups such as ours to establish an insurance company is essential. The idea we seek to implement is after meeting the requirements in a selected state for establishing the company, the company would be able to write insurance in all fifty states. This is the

only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.

PAGE 8, LINES 8 - Page 9 - line 14;  
SEC. 12 AS 21. 28. 030  
CSHB 522  
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Original sponsors: Sund, Koponen,  
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IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 522 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and the provision of medical malpractice insurance for nurses and nurse midwives."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [ . NOTHING ] in this section is intended to alter the common law of agency as applied to transactions under this title.

\* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

\* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

1 (1) nonpayment of premium; or  
2 (2) the driver's license or motor vehicle registration of  
3 either the named insured or of an operator who resides in the same  
4 household as the named insured or who customarily operates a motor  
5 vehicle insured under the policy has been under suspension or revoca-  
6 tion during the policy period or, if the policy is a renewal, during  
7 its policy period or the 180 days immediately preceding its effective  
8 date.

9 \* Sec. 4. AS 21.36.210(d) is amended to read:

10 (d) This section does not apply to

11 (1) the failure to renew a policy, except as to coverage in  
12 force for less than 12 months;

13 (2) a policy that has been in effect less than 60 days at  
14 the time notice of cancellation is mailed or delivered by the insurer,  
15 unless it is a renewal policy;

16 (3) a policy issued under an automobile assigned risk plan  
17 or automobile insurance plan;

18 (4) a policy insuring more than four motor vehicles;

19 (5) a policy covering the operation of a garage; automobile  
20 sales agency, repair shop, or service station; or public parking  
21 place;

22 (6) a policy providing insurance only on an excess basis;

23 (7) any other contract providing insurance to the named  
24 insured, even though the contract may incidentally provide insurance  
25 with respect to motor vehicles.

26 \* Sec. 5. AS 21.36.210(f) is amended to read:

27 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not  
28 exercise its right to cancel a policy of personal insurance other than  
29 personal automobile insurance, except for the following reasons [THE

1 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDI-  
2 TIONS OR CIRCUMSTANCES ARISES]:

3 (1) nonpayment of premiums, including nonpayment of addi-  
4 tional premiums, calculated in accordance with the current rating  
5 manual of the insurer, justified by a physical change in the insured  
6 property or a change in its occupancy or use;

7 (2) conviction of the insured of a crime having as one of  
8 its necessary elements an act increasing a hazard insured against;

9 (3) discovery of fraud or material misrepresentation made  
10 by the insured or a representative of the insured in obtaining the  
11 insurance or by the insured in pursuing a claim under the policy;

12 (4) discovery of a grossly negligent act or omission by the  
13 insured that substantially increases the hazards insured against; or

14 (5) physical changes in the insured property that result in  
15 the property becoming uninsurable.

16 \* Sec. 6. AS 21.36 is amended by adding a new section to read:

17 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-  
18 Mercial INSURANCE POLICES. (a) Except as allowed by the director  
19 under (b) of this section, an insurer may exercise its right to cancel  
20 a policy of business or commercial insurance only for the following  
21 reasons:

22 (1) nonpayment of premiums, including nonpayment of addi-  
23 tional premiums, calculated in accordance with the current rating  
24 manual of the insurer, justified by a physical change in the insured  
25 property or a change in its occupancy or use;

26 (2) conviction of the insured of a crime having as one of  
27 its necessary elements an act increasing a hazard insured against;

28 (3) discovery of fraud or material misrepresentation made  
29 by the insured or a representative of the insured in obtaining the

1 insurance or by the insured in pursuing a claim under the policy;

2 (4) discovery of a grossly negligent act or omission by the  
3 insured that substantially increases the hazards insured against;

4 (5) physical changes in the insured property that result in  
5 the property becoming uninsurable;

6 (6) physical changes in the operations of the insured that  
7 result in the property becoming uninsurable;

8 (7) changes in the reinsurance program of the insurer that  
9 results in an increase of the insurer's retention of risk on a subject  
10 of insurance;

11 (8) changes in the financial condition of the insurer  
12 resulting in a violation of AS 21.12.010;

13 (9) a material change in the law that affects the coverage  
14 provided under the policy; or

15 (10) an excessive number of claims by the insured.

16 (b) Before issuing a notice of cancellation, an insurer may  
17 request the director to determine in a particular case whether a  
18 reason for cancellation not specified in (a) of this section is a  
19 valid reason for cancellation. The director may allow the insurer to  
20 exercise its right to cancel if the director finds that the cancella-  
21 tion is justified. The insurer may not implement the requested can-  
22 cellation before receiving the approval of the director.

23 \* Sec. 7. AS 21.36.220 is amended to read:

24 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not  
25 exercise its right to cancel a personal insurance policy unless a  
26 written notice of cancellation is mailed or delivered to the named  
27 insured, at the address shown in the policy, at least 60 [20] days  
28 before the effective date of cancellation. However, if [, EXCEPT THAT  
29 WHEN] cancellation is for nonpayment of premium, the notice must

1 [SHALL] be mailed or delivered to the named insured at the address  
2 shown in the policy at least 10 days before the effective date of  
3 cancellation, and must [SHALL] include or be accompanied by a state-  
4 ment of the reason for the cancellation. [THIS SECTION DOES NOT APPLY  
5 TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR  
6 LESS THAN 12 MONTHS.]

7 \* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

8 (b) An insurer may not exercise its right to cancel a policy of  
9 business or commercial insurance unless a written notice of cancella-  
10 tion is mailed or delivered to the named insured, at the address shown  
11 in the policy, and to the agent or broker of record, at least <sup>45</sup>~~30~~ days  
12 before the effective date of cancellation. However, if cancellation  
13 is for nonpayment of premium, the notice must be mailed or delivered  
14 to the named insured at the address shown in the policy and to the  
15 agent or broker of record at least 10 days before the effective date  
16 of cancellation, and must include or be accompanied by a statement of  
17 the reason for the cancellation.

18 (c) If an insurer cancels a policy under (b) of this section, it  
19 shall return or credit any unearned premium to the agent or broker of  
20 record or directly to the insured or premium finance company, if  
21 applicable, before the effective date of cancellation, except that

22 (1) if cancellation is for nonpayment of premium, any  
23 unearned premium must be returned or credited within 45 days after the  
24 notice of cancellation is given;

25 (2) if the policy premium is subject to audit the insurer  
26 shall perform an audit within 30 days of the effective date of the  
27 cancellation and return or credit any unearned premium within 30 days  
28 of the completion of the audit.

29 \* Sec. 9. AS 21.36.240 is amended to read:

1           Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to  
2 renew a personal insurance policy in force for less than 12 months.  
3 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR  
4 MORE] unless a written notice of nonrenewal is mailed or delivered to  
5 the named insured, at the address shown in the policy, at least 20  
6 days for a personal insurance policy, and at least 45 days for a  
7 business or commercial insurance policy, before the expiration date of  
8 the policy [,] or of the anniversary date of a policy written for a  
9 term longer than one year or with no fixed expiration date. This  
10 section does not apply

11           (1) if the insurer has in good faith manifested in any way  
12 its willingness to renew;

13           (2) in case of nonpayment of premium for the expiring  
14 policy; or

15           (3) if the insured fails to pay the premium as required by  
16 the insurer for renewal.

17 \* Sec. 10. AS 21.36.250 is amended to read:

18           Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-  
19 bile liability insurance is cancelled, other than for nonpayment of  
20 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A  
21 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-  
22 PLIES], the insurer shall notify the named insured of possible eligi-  
23 bility for automobile insurance through the automobile assigned risk  
24 plan, or automobile insurance plan. The notification must [SHALL]  
25 accompany or be included in the notice of cancellation or nonrenewal  
26 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

27 \* Sec. 11. AS 21.36.310 is amended to read:

28           Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

29           (1) "business or commercial insurance" means insurance

1 other than personal insurance, life insurance, disability insurance,  
2 fidelity and surety insurance, title insurance, or an annuity con-  
3 tract;

4 (2) "nonpayment of premium" means failure of the named  
5 insured to discharge when due any obligations of the named insured in  
6 connection with the payment of premium on a policy, or any installment  
7 of the premium, whether the premium is payable directly to the insurer  
8 or its agent or indirectly under any premium finance plan or extension  
9 of credit;

10 (3) "personal automobile insurance" means insurance not  
11 related to business or commercial activities, covering [(2) "POLICY"  
12 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN  
13 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile  
14 liability, uninsured/underinsured motorists [COVERAGE, UNINSURED  
15 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-  
16 bile physical damage [COVERAGE], that is delivered or issued for  
17 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL  
18 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which  
19 the insured vehicles are of the following types only:

20 (A) a motor vehicle of the private passenger or sta-  
21 tion wagon type that is not used as a public or livery convey-  
22 ance, nor rented to others; or

23 (B) any other four-wheel motor vehicle with a load  
24 capacity of 1,500 pounds or less that is not used in the occupa-  
25 tion, profession, or business of the insured, nor used as a  
26 public or livery conveyance, nor rented to others;

27 (4) "personal insurance" does not include an annuity con-  
28 tract or a policy of life insurance, disability insurance, or title  
29 insurance; the term means personal automobile insurance, or insurance

1           covering

2                           (A) loss of or damage to real property that is used  
3                           predominantly for residential purposes and that does not consist  
4                           of more than four dwelling units;

5                           (B) loss of or damage to personal property, including  
6                           personal effects, household furniture, fixtures and equipment  
7                           located in not more than four dwelling units; or

8                           (C) legal liability of natural persons for loss of,  
9                           damage to or injury to persons or property if the insurance does  
10                           not cover liability arising from or in connection with business  
11                           or commercial activities;

12                   (5) [(3)] "renewal" or "renew" means

13                           (A) the issuance and delivery by an insurer of a  
14                           policy replacing at the end of the policy period a policy previ-  
15                           ously issued and delivered by the same insurer,

16                           (B) the issuance and delivery of a certificate or  
17                           notice extending the term of a policy beyond its policy period or  
18                           term, or

19                           (C) the extension of the term of a policy beyond its  
20                           policy period or term under a provision for extending the policy  
21                           by payment of a continuation premium.

22       \* Sec. 12. AS 21.88.050 is amended to read:

23                   Sec. 21.88.050.   POWERS AND DUTIES OF THE CORPORATION. (a) The  
24                   corporation shall

25                           (1) in the form approved by the director, issue to all  
26                           physicians, nurses, nurse midwives, and hospitals who are found to be  
27                           acceptable risks under standards developed under (5) of this subsec-  
28                           tion, and who pay the premiums for it, a contract or contracts indem-  
29                           nifying physicians, nurses, nurse midwives, and hospitals and their

1 employees who are health care providers against loss by reason of  
2 liability for covered claims for an act or omission in the delivery of  
3 professional health care in this state, and agreeing to tender on  
4 behalf of the physicians, nurses, nurse midwives, and hospitals and  
5 their employees who are health care providers a defense to a covered  
6 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the  
7 limits of liability for policies issued by the corporation shall be  
8 approved by the director; the contract shall cover the defense against  
9 but need not indemnify liability for punitive damages arising from a  
10 covered claim; at the option of the corporation, if approved by the  
11 director, and for an additional premium the contract may cover claims  
12 against the physician, nurse, nurse midwife, or hospital that arise  
13 out of professional services performed by the physician, nurse, nurse  
14 midwife, or hospital for any period before the contract is issued,  
15 except that coverage will not be provided for a claim already filed or  
16 of which the physician, nurse, nurse midwife, or hospital had or  
17 reasonably should have had notice at the time the retroactive insur-  
18 ance was purchased;

19 (2) charge a premium for the protection provided by the  
20 contracts issued by the corporation which shall be determined by the  
21 board of governors in accordance with AS 21.86.080 and subject to the  
22 approval of the director;

23 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
24 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,  
25 21.09.280, AS 21.12.020(b)-(c), AS 21.18, AS 21.21, AS 21.24 and  
26 AS 21.36; and shall be exempt from participation as a member insurer  
27 in the Alaska Insurance Guaranty Corporation;

28 (4) carry out the obligations of the contracts issued by  
29 the corporation by defending all covered claims made against insured

1 health care providers and by paying all liabilities that [WHICH] are  
2 finally adjudicated against the insured health care provider or that  
3 [WHICH] may in the opinion of the corporation reasonably be expected  
4 to be finally adjudicated against the health care provider to the  
5 extent of the contract obligation;

6 (5) establish standards for the acceptability of risks; in  
7 establishing these standards the corporation may exclude an applicant  
8 for insurance based on individual risk selection factors, but may not  
9 exclude an applicant based only on the classification of the appli-  
10 cant.

11 (b) The corporation may

12 (1) employ or retain persons, individual or corporate, to  
13 discharge its obligations and pay reasonable compensation for these  
14 services; employees of the corporation are not considered state em-  
15 ployees;

16 (2) negotiate for and procure reinsurance from private  
17 casualty insurers or reinsurers for any and all liability incurred by  
18 contracts issued by it;

19 (3) provide coverage to insureds for other hazards custom-  
20 arily included in medical malpractice insurance policies when there is  
21 a finding by the director that this coverage is not available to  
22 insureds of the Medical Indemnity Corporation of Alaska in the private  
23 insurance market at a competitive price;

24 (4) borrow or advance funds necessary to carry out the  
25 purposes of the corporation;

26 (5) negotiate and become a party to those contracts as are  
27 necessary to carry out the purposes of the corporation;

28 (6) sue or be sued in the name of the corporation;

29 (7) provide risk management advice and services to

1 hospitals;

2 (8) negotiate and become a party to contracts for manage-  
3 ment services for the corporation;

4 (9) perform all other acts necessary and proper to carry  
5 out the duties of the corporation;

6 (10) in a form approved by the director and for an addition-  
7 al premium determined under AS 21.88.080, issue endorsements which  
8 provide indemnity for claims not yet reported which arise out of  
9 professional services rendered during a period of continuous coverage  
10 under the originally issued contract, to physicians, nurses, nurse  
11 midwives, and hospitals who pay the premium for it and who are termi-  
12 nating their original covered claims contract with the corporation for  
13 a period of not less than one year;

14 (11) subject to approval by the director, extend coverage  
15 to a person, entity, or facility that renders health care services in  
16 the state under the supervision of a physician.

17 \* Sec. 13. AS 21.88.900 is amended by adding new paragraphs to read:

18 (17) "nurse" means a nurse licensed under AS 08.68;

19 (18) "nurse midwife" means a registered professional nurse  
20 who is certified as an advanced nurse practitioner under AS 08.68.-  
21 410(1) and authorized to practice as a nurse midwife under regulations  
22 adopted under AS 08.68.

23 \* Sec. 14. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.  
24  
25  
26  
27  
28  
29

Offered: 4/28/86  
Referred: Rules

Original sponsors: Sund, Koponen,  
and Gruenberg

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 522 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to an insurance broker's receipt of  
7 premium payments, the cancellation or nonrenewal of  
8 insurance policies, the composition of the board of  
9 the Medical Indemnity Corporation of Alaska, and the  
10 provision of medical malpractice insurance for nurses  
11 and nurse midwives."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 \* Section 1. AS 21.27.200(e) is amended read:

14 (a) Except as provided in (c) of this section,

15 (1) a [A] broker, as such, is not an agent or other rep-  
16 resentative of an insurer, and does not have power as a broker to bind  
17 the insurer upon any risk or with reference to any insurance contract;  
18 and

19 (2) nothing [ . NOTHING ] in this section is intended to  
20 alter the common law of agency as applied to transactions under this  
21 title.

22 \* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

23 (c) For purposes of determining an insured's entitlement to  
24 coverage, a premium paid to the broker is considered to be received by  
25 the insurer, if the payment to the broker is designated for specific  
26 coverage from a specifically named insurer and is supported by compe-  
27 tent evidence.

28 \* Sec. 3. AS 21.36.210(a) is amended to read:

29 (a) An insurer may not exercise its right to cancel a policy of

1        personal [AN] automobile insurance [POLICY] except for the following  
2 reasons:

3            (1) nonpayment of premium; or

4            (2) the driver's license or motor vehicle registration of  
5 either the named insured or of an operator who resides in the same  
6 household as the named insured or who customarily operates a motor  
7 vehicle insured under the policy has been under suspension or revoca-  
8 tion during the policy period or, if the policy is a renewal, during  
9 its policy period or the 180 days immediately preceding its effective  
10 date.

11 \* Sec. 4. AS 21.36.210(d) is amended to read:

12            (d) This section does not apply to

13            (1) the failure to renew a policy, except as to coverage in  
14 force for less than 12 months;

15            (2) a policy that has been in effect less than 60 days at  
16 the time notice of cancellation is mailed or delivered by the insurer,  
17 unless it is a renewal policy;

18            (3) a policy issued under an automobile assigned risk plan  
19 or automobile insurance plan;

20            (4) a policy insuring more than four motor vehicles;

21            (5) a policy covering the operation of a garage; automobile  
22 sales agency, repair shop, or service station; or public parking  
23 place;

24            (6) a policy providing insurance only on an excess basis;

25            (7) any other contract providing insurance to the named  
26 insured, even though the contract may incidentally provide insurance  
27 with respect to motor vehicles.

28 \* Sec. 5. AS 21.36.210(f) is amended to read:

29            (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not

1 exercise its right to cancel a policy of personal insurance other than  
2 personal automobile insurance, except for the following reasons [THE  
3 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDI-  
4 TIONS OR CIRCUMSTANCES ARISES]:

5 (1) nonpayment of premiums, including nonpayment of addi-  
6 tional premiums, calculated in accordance with the current rating  
7 manual of the insurer, justified by a physical change in the insured  
8 property or a change in its occupancy or use;

9 (2) conviction of the insured of a crime having as one of  
10 its necessary elements an act increasing a hazard insured against;

11 (3) discovery of fraud or material misrepresentation made  
12 by the insured or a representative of the insured in obtaining the  
13 insurance or by the insured in pursuing a claim under the policy;

14 (4) discovery of a grossly negligent act or omission by the  
15 insured that substantially increases the hazards insured against; or

16 (5) physical changes in the insured property that result in  
17 the property becoming uninsurable.

18 \* Sec. 6. AS 21.36 is amended by adding a new section to read:

19 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-  
20 Mercial INSURANCE POLICES. (a) Except as allowed by the director  
21 under (b) of this section, an insurer may exercise its right to cancel  
22 a policy of business or commercial insurance only for the following  
23 reasons:

24 (1) nonpayment of premiums, including nonpayment of  
25 additional premiums, calculated in accordance with the current rating  
26 manual of the insurer, justified by a physical change in the insured  
27 property or a change in its occupancy or use;

28 (2) conviction of the insured of a crime having as one of  
29 its necessary elements an act increasing a hazard insured against;

1           (3) discovery of fraud or material misrepresentation made  
2 by the insured or a representative of the insured in obtaining the  
3 insurance or by the insured in pursuing a claim under the policy;

4           (4) discovery of a grossly negligent act or omission by the  
5 insured that substantially increases the hazards insured against;

6           (5) physical changes in the insured property that result in  
7 the property becoming uninsurable;

8           (6) physical changes in the operations of the insured that  
9 result in the property becoming uninsurable;

10          (7) changes in the reinsurance program of the insurer that  
11 results in an increase of the insurer's retention of risk on a subject  
12 of insurance;

13          (8) changes in the financial condition of the insurer  
14 resulting in a violation of AS 21.12.010;

15          (9) a material change in the law that affects the coverage  
16 provided under the policy; or

17          (10) an excessive number of claims by the insured.

18          (b) Before issuing a notice of cancellation, an insurer may  
19 request the director to determine in a particular case whether a  
20 reason for cancellation not specified in (a) of this section is a  
21 valid reason for cancellation. The director may allow the insurer to  
22 exercise its right to cancel if the director finds that the cancella-  
23 tion is justified. The insurer may not implement the requested can-  
24 cellation before receiving the approval of the director.

25 \* Sec. 7. AS 21.36.220 is amended to read:

26          Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not  
27 exercise its right to cancel a personal insurance policy unless a  
28 written notice of cancellation is mailed or delivered to the named  
29 insured, at the address shown in the policy, at least 60 [20] days

1 before the effective date of cancellation. However, if [, EXCEPT THAT  
2 WHEN] cancellation is for nonpayment of premium, the notice must  
3 [SHALL] be mailed or delivered to the named insured at the address  
4 shown in the policy at least 10 days before the effective date of  
5 cancellation, and must [SHALL] include or be accompanied by a state-  
6 ment of the reason for the cancellation. [THIS SECTION DOES NOT APPLY  
7 TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR  
8 LESS THAN 12 MONTHS.]

9 \* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

10 (b) An insurer may not exercise its right to cancel a policy of  
11 business or commercial insurance unless a written notice of cancella-  
12 tion is mailed or delivered to the named insured, at the address shown  
13 in the policy, and to the agent or broker of record, at least 60 days  
14 before the effective date of cancellation. However, if cancellation  
15 is for nonpayment of premium, the notice must be mailed or delivered  
16 to the named insured at the address shown in the policy and to the  
17 agent or broker of record at least 10 days before the effective date  
18 of cancellation, and must include or be accompanied by a statement of  
19 the reason for the cancellation.

20 (c) If an insurer cancels a policy under (b) of this section, it  
21 shall return or credit any unearned premium to the agent or broker of  
22 record or directly to the insured or premium finance company, if  
23 applicable, before the effective date of cancellation, except that

24 (1) if cancellation is for nonpayment of premium, any  
25 unearned premium must be returned or credited within 45 days after the  
26 notice of cancellation is given;

27 (2) if the policy premium is subject to audit the insurer  
28 shall perform an audit within 30 days of the effective date of the  
29 cancellation and return or credit any unearned premium within 30 days

1 of the completion of the audit.

2 \* Sec. 9. AS 21.36.240 is amended to read:

3 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to  
4 renew a personal insurance policy in force for less than 12 months.  
5 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR  
6 MORE] unless a written notice of nonrenewal is mailed or delivered to  
7 the named insured, at the address shown in the policy, at least 20  
8 days for a personal insurance policy, and at least 45 days for a  
9 business or commercial insurance policy, before the expiration date of  
10 the policy [,] or of the anniversary date of a policy written for a  
11 term longer than one year or with no fixed expiration date. This  
12 section does not apply

13 (1) if the insurer has in good faith manifested in any way  
14 its willingness to renew;

15 (2) in case of nonpayment of premium for the expiring  
16 policy; or

17 (3) if the insured fails to pay the premium as required by  
18 the insurer for renewal.

19 \* Sec. 10. AS 21.36.250 is amended to read:

20 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-  
21 bile liability insurance is cancelled, other than for nonpayment of  
22 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A  
23 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-  
24 PLIES], the insurer shall notify the named insured of possible  
25 eligibility for automobile insurance through the automobile assigned  
26 risk plan, or automobile insurance plan. The notification must  
27 [SHALL] accompany or be included in the notice of cancellation or  
28 nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

29 \* Sec. 11. AS 21.36.310 is amended to read:

1           Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

2           (1) "business or commercial insurance" means insurance  
3 other than personal insurance, life insurance, disability insurance  
4 fidelity and surety insurance, title insurance, or an annuity con-  
5 tract;

6           (2) "nonpayment of premium" means failure of the named  
7 insured to discharge when due any obligations of the named insured in  
8 connection with the payment of premium on a policy, or any installment  
9 of the premium, whether the premium is payable directly to the insurer  
10 or its agent or indirectly under any premium finance plan or extension  
11 of credit;

12           (3) "personal automobile insurance" means insurance not  
13 related to business or commercial activities, covering [(2) "POLICY"  
14 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN  
15 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile  
16 liability, uninsured/underinsured motorists [COVERAGE, UNINSURED  
17 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-  
18 bile physical damage [COVERAGE], that is delivered or issued for  
19 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL  
20 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which  
21 the insured vehicles are of the following types only:

22           (A) a motor vehicle of the private passenger or sta-  
23 tion wagon type that is not used as a public or livery convey-  
24 ance, nor rented to others; or

25           (B) any other four-wheel motor vehicle with a load  
26 capacity of 1,500 pounds or less that is not used in the occupa-  
27 tion, profession, or business of the insured, nor used as a  
28 public or livery conveyance, nor rented to others;

29           (4) "personal insurance" does not include an annuity con-

1 tract or a policy of life insurance, disability insurance, or title  
2 insurance; the term means personal automobile insurance, or insurance  
3 covering

4 (A) loss of or damage to real property that is used  
5 predominantly for residential purposes and that does not consist  
6 of more than four dwelling units;

7 (B) loss of or damage to personal property, including  
8 personal effects, household furniture, fixtures and equipment  
9 located in not more than four dwelling units; or

10 (C) legal liability of natural persons for loss of,  
11 damage to or injury to persons or property if the insurance does  
12 not cover liability arising from or in connection with business  
13 or commercial activities;

14 (5) [(3)] "renewal" or "renew" means

15 (A) the issuance and delivery by an insurer of a  
16 policy replacing at the end of the policy period a policy previ-  
17 ously issued and delivered by the same insurer,

18 (B) the issuance and delivery of a certificate or  
19 notice extending the term of a policy beyond its policy period or  
20 term, or

21 (C) the extension of the term of a policy beyond its  
22 policy period or term under a provision for extending the policy  
23 by payment of a continuation premium.

24 \* Sec. 12. AS 21.88.030(a) is amended to read:

25 (a) The corporation shall exercise its powers through a board of  
26 governors that [WHICH] is appointed by the governor of the state and  
27 confirmed by the legislature. Members of the board of governors shall  
28 be Alaska residents as follows:

29 (1) three [FOUR] physicians licensed in the state and

1 engaged in private practice in the state; no more than two of the  
2 physicians shall practice or live in a municipality having a popu-  
3 lation of more than 100,000, and two of the physicians must be indem-  
4 nified against loss by reason of liability for an act or omission in  
5 the delivery of professional health care by the Medical Indemnity  
6 Corporation of Alaska;

7 (2) one nurse or nurse midwife;

8 (3) an administrator or senior executive officer employed  
9 by a hospital licensed in the state;

10 (4) [(3)] two professionals from the insurance industry who  
11 are authorized or licensed to do business in the state;

12 (5) [(4)] two persons who are not health care providers or  
13 financially interested in the field of health care or representatives  
14 of the insurance industry.

15 \* Sec. 13. AS 21.88.050 is amended to read:

16 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
17 corporation shall

18 (1) in the form approved by the director, issue to all  
19 physicians, nurses, nurse midwives, and hospitals who are found to be  
20 acceptable risks under standards developed under (5) of this  
21 subsection, and who pay the premiums for it, a contract or contracts  
22 indemnifying physicians, nurses, nurse midwives, and hospitals and  
23 their employees who are health care providers against loss by reason  
24 of liability for covered claims for an act or omission in the delivery  
25 of professional health care in this state, and agreeing to tender on  
26 behalf of the physicians, nurses, nurse midwives, and hospitals and  
27 their employees who are health care providers a defense to a covered  
28 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the  
29 limits of liability for policies issued by the corporation shall be

1 approved by the director; the contract shall cover the defense against  
2 but need not indemnify liability for punitive damages arising from a  
3 covered claim; at the option of the corporation, if approved by the  
4 director, and for an additional premium the contract may cover claims  
5 against the physician, nurse, nurse midwife, or hospital that arise  
6 out of professional services performed by the physician, nurse, nurse  
7 midwife, or hospital for any period before the contract is issued,  
8 except that coverage will not be provided for a claim already filed or  
9 of which the physician, nurse, nurse midwife, or hospital had or  
10 reasonably should have had notice at the time the retroactive  
11 insurance was purchased;

12 (2) charge a premium for the protection provided by the  
13 contracts issued by the corporation which shall be determined by the  
14 board of governors in accordance with AS 21.88.080 and subject to the  
15 approval of the director;

16 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
17 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,  
18 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and  
19 AS 21.36; and shall be exempt from participation as a member insurer  
20 in the Alaska Insurance Guaranty Corporation;

21 (4) carry out the obligations of the contracts issued by  
22 the corporation by defending all covered claims made against insured  
23 health care providers and by paying all liabilities that [WHICH] are  
24 finally adjudicated against the insured health care provider or that  
25 [WHICH] may in the opinion of the corporation reasonably be expected  
26 to be finally adjudicated against the health care provider to the  
27 extent of the contract obligation;

28 (5) establish standards for the acceptability of risks; in  
29 establishing these standards the corporation may exclude an applicant

1 for insurance based on individual risk selection factors, but may not  
2 exclude an applicant based only on the classification of the appli-  
3 cant.

4 (b) The corporation may

5 (1) employ or retain persons, individual or corporate, to  
6 discharge its obligations and pay reasonable compensation for these  
7 services; employees of the corporation are not considered state em-  
8 ployees;

9 (2) negotiate for and procure reinsurance from private  
10 casualty insurers or reinsurers for any and all liability incurred by  
11 contracts issued by it;

12 (3) provide coverage to insureds for other hazards custom-  
13 arily included in medical malpractice insurance policies when there is  
14 a finding by the director that this coverage is not available to  
15 insureds of the Medical Indemnity Corporation of Alaska in the private  
16 insurance market at a competitive price;

17 (4) borrow or advance funds necessary to carry out the  
18 purposes of the corporation;

19 (5) negotiate and become a party to those contracts as are  
20 necessary to carry out the purposes of the corporation;

21 (6) sue or be sued in the name of the corporation;

22 (7) provide risk management advice and services to hospi-  
23 tals;

24 (8) negotiate and become a party to contracts for  
25 management services for the corporation;

26 (9) perform all other acts necessary and proper to carry  
27 out the duties of the corporation;

28 (10) in a form approved by the director and for an addition-  
29 al premium determined under AS 21.88.080, issue endorsements which

1 provide indemnity for claims not yet reported which arise out of  
2 professional services rendered during a period of continuous coverage  
3 under the originally issued contract, to physicians, nurses, nurse  
4 midwives, and hospitals who pay the premium for it and who are  
5 terminating their original covered claims contract with the  
6 corporation for a period of not less than one year;

7 (11) subject to approval by the director, extend coverage  
8 to a person, entity, or facility that renders health care services in  
9 the state under the supervision of a physician.

10 \* Sec. 14. AS 21.88.900 is amended by adding new paragraphs to read:

11 (17) "nurse" means a nurse licensed under AS 08.68;

12 (18) "nurse midwife" means a registered professional nurse  
13 who is certified as an advanced nurse practitioner under AS 08.68.-  
14 410(1) and authorized to practice as a nurse midwife under regulations  
15 adopted under AS 08.68.

16 \* Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSHB 522 (L&C)  
 Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives  
 Sponsor: Labor & Commerce  
 Requester: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Commerce & Economic Development  
 BRU: Insurance  
 Components: Public Protection

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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<b>REVENUE</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
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**FUNDING: (Thousands of dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
<b>TEMPORARY</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**ANALYSIS:** Attach a separate page if necessary.

Prepared by: John L. George, Director  
 Division: Division of Insurance

Phone: 465-2515  
 Date: April 14, 1986

Approved by Commissioner: John A. Lumburg  
 Agency: Commerce and Economic Development

Date: April 14, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



# RECORDS CERTIFICATION

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James O. Smith  
Signature of Camera Operator

11/24/89  
Date

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# ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301  
ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 4, 1986

Representative Richard Shultz  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Dick:

Pursuant to your request in our telephone conversation today, I would submit the proposed statutory amendment below. This amendment would permit cooperatives like Alaska Village Electric Cooperative or Middle Kuskokwim Electric Cooperative which are scattered over areas not connected by a road system to continue acting on their bylaws through delegates while requiring cooperatives which are connected by roads to act on their bylaws through a vote of their members as you indicated is your desire.

AS 10:25.070 Bylaws. The board of directors shall adopt the first bylaws of a cooperative to be adopted following an incorporation, conversion, merger or consolidation. Thereafter the [MEMBERS OR] district delegates in cooperatives having three or more districts which are not connected by a road system [SHALL] may adopt, amend or repeal the bylaws by the affirmative vote of a majority of those [MEMBERS OR] district delegates voting on the adoption, amendment or repeal at a meeting of the [MEMBERS OR] district delegates. In all other cooperatives, the members shall adopt, amend or repeal the bylaws by the affirmative vote of a majority of those members voting on the adoption, amendment or repeal at a meeting of the members. The bylaws shall set forth the rights and duties of members, district delegates and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with its articles of incorporation.

Sincerely,

*Dave*  
David Hutchens  
Executive Director

DH/cf

**HOGGE AND LEKISCH**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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DAVID B. JOHNSON  
GORDON D. LEE  
JOHN W. COLVER

April 2, 1986

Representative Mike Navarre, Chairman  
House Labor and Commerce Committee  
House of Representatives  
Pouch V  
Juneau, AK 99811

Re: House Bill 562

Dear Mr. Chairman:

This letter which is written at the request of this firm's client Copper Valley Electric Association, Inc. (CVEA), will explain the background that led in part to the introduction of House Bill No. 562.

CVEA is divided into two (2) districts: the Copper River Basin and the Valdez Districts. The cooperative uses a delegate system for amending its Bylaws. Pursuant to the existing Bylaws, three out of 18 delegates can call a special meeting. Recently, three delegates attempted to call a special meeting. One of the items on the agenda was a possible move of the headquarters of CVEA from Glennallen to Valdez. No member notice was given. A great deal of concern arose from some of the residents of Glennallen that Glennallen would lose a major employer in the area. CVEA's staff was also concerned because of commitments made by them for housing in Glennallen and family considerations. Further, some CVEA Board members were concerned that it would not be economically wise for the move to be made. Finally, there was a general concern that the members were not even notified of the proposed move.

CVEA has 1755 voting members. Because of the way the delegate system works, ten members, as delegates, could vote to move the headquarters without membership notice or approval or input and consideration by the Board.

The purpose of House Bill 562 is to leave that kind of decisionmaking up to a majority of the members. The advantage to membership voting is that ballot propositions would be placed before the membership, an opportunity would be given for the membership to hear the pros and cons of the propositions, and a considered vote could be made by the membership.

Rep. Mike Navarre, Chairman  
House Labor and Commerce Committee  
April 2, 1986  
Page 2

The district delegate method of voting does not seem appropriate when only three out of 1755 members could call for such a proposition and, with the concurrence of seven other delegate members, make such a decision for the cooperative.

The proposed law will still allow basic majority control by the membership for changes; in this manner, all members will have the opportunity to vote and not just a select few delegates.

Very truly yours,

HOGGE and LEKISCH  
Attorneys for Copper Valley  
Electric Association, Inc.

  
Andrew E. Hoge

ABH/ms/AHVIII126

cc: Copper Valley Electric Association, Inc.  
Alaska Rural Electric Cooperatives Association, Inc.



Official Business

# Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

CSHB 562 (L&C) Summary

This measure requires cooperatives which encompass 3 or more districts, and are not connected by the road system, to retain the delegate system of representation. These cooperatives may change bylaws by an affirmative vote of the delegates attending a meeting of the district delegates.

All other cooperatives may change bylaws by an affirmative vote of the majority of those members voting. This provision extends to voting at a meeting of the members or votes cast by mail ballot without a meeting.

CHAIRMAN'S INFORMATION: CSHB 562(L&C)

- 1) BILL TITLE: "An act relating to the adoption of bylaws by cooperatives."
  - a) Introduced: Rep Schultz
  - b) Co-sponsors:
- 2) INTENT: This measure concerns the adoption of bylaws by cooperatives.

FISCAL NOTE: 0

- 3) ADDITIONAL REFERRALS: Rules
- 4) PUBLIC HEARINGS:
  - a) Sponsor:
  - b) Public Witnesses:
- 5) BILL ACTION:
  - a) Hold in committee?
  - b) Assign to sub committee for further review?
  - c) Move from committee?
  - d) Close public hearings?
- 6) COMMITTEE ACTION?
  - a) amendments?
  - b) CS adoption?

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 562  
 Title: An act relating to the adoption of cooperative bylaws

Sponsor: Shultz  
 Requester: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Commerce and Economic Dev.  
 BRU: APUC

Components: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES / REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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**FUNDING: (Thousands of dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS:** Attach a separate page if necessary.

Prepared by: Carolyn Guess  
 Division: Commissioner, APUC

Phone: 276-6222  
 Date: April 7, 1986

Approved by Commissioner: *Steven H. Lundberg*  
 Agency: Commerce and Economic Development

Date: April 7, 1986

Distribution (by Agency preparing fiscal note):

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